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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
की रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed
as a separate compilation

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 10th May, 1985:—

I

BILL NO. X OF 1985

A Bill to provide for the speedy trial of claims by kins of persons who died and by persons who suffered injuries by leakage of poisonous Gas in December, 1984 from the plant of the Union Carbide India Limited at Bhopal (Madhya Pradesh) and for matters connected therewith and incidental thereto

WHEREAS the total population of the area immediately affected by the escaping gas was about 2.5 lakhs of which nearly 1 5 lakhs was in areas over which the gas settled in high concentration;

AND WHEREAS a substantial population of Bhopal was also exposed to the escaping gas in non lethal doses the effects of which could manifest over a period of time;

AND WHEREAS it is apprehended that there would be large scale outbreak of delayed effects and secondary infections as well as relapses rendering it impossible at this stage to assess the extent of injury or the effects thereof or the treatment required therefor;

AND WHEREAS the ordinary civil courts cannot reasonably be expected to handle such large number of cases and bring these cases to a speedy termination;

AND WHEREAS it is imperative for the payment of compensation to the dependents and those injured by exposure that their claims against the said Company are judicially determined with utmost despatch;

AND WHEREAS it is necessary for the said purposes to establish Special Courts presided over by sitting Judges of High Courts;

AND WHEREAS it is expedient to make some changes in existing procedures whereby avoidable delay in the final determination of the claims is minimised without interfering with the right to a fair trial;

AND WHEREAS the rule of common law known as the "Rule in Rylands vs Fletcher", which is a part of the law of India, imposes upon a person who brings and keeps upon his land anything likely to do damage if it escapes a duty to prevent its escape and makes him liable for all the direct consequences of such escape, even if he has not been guilty of any negligence.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Bhopal Gas Leak Affected Areas (Special Courts) Act, 1985.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "application" means and application made under section 13.

(*b*) "appointed day" in relation to a Special Court, means the date with effect from which it is established, by a notification, under section 3.

(*c*) "bench" means a Bench of a Special Court;

(*d*) "code" means the Code of Civil Procedure. 5 of 1908.

(*e*) "company" means the Union Carbide India Limited Bhopal;

(*f*) "High Court" in relation to the Special Court, means the High Court of Madhya Pradesh;

(*g*) "notification" means a notification published in the official Gazette;

(*h*) "prescribed" means prescribed by rules made by the Supreme Court under this Act;

(*i*) "rules" means rules made under this Act;

(*j*) "Special Court" means a Special Court established under section 3.

Establishment of Special Courts.

3. (*1*) The Central Government shall, by notification in the Official Gazette, establish an adequate number of Courts to be called Special Courts to exercise the jurisdiction, powers and authority conferred on them by or under this Act.

Composition and appointment of Judges of, Special Courts.

4. (*1*) A Special Court shall be presided over by a sitting Judge of the High Court nominated by the Chief Justice of the High Court with the concurrence of the Chief Justice of India.

(*2*) **The Chief Justice of the High Court may also appoint, with the concurrence of the Chief Justice of India, Additional Judges to exercise jurisdiction in a Special Court.**

(*3*) Subject to the provisions of this Act, the jurisdiction, powers and authority of a Special Court may be exercised by a Bench thereof.

Jurisdiction of Special Court.

5. (*1*) Notwithstanding anything contained in any other law, the Special Court shall have exclusive jurisdiction to receive, entertain and try the claims as are instituted before it or as stand transferred to it in accordance with and in the manner provided by this Act.

(2) Notwithstanding anything contained in the Code or any other law, no Court other than the Special Court shall have jurisdiction to receive, entertain or try any such case or claim or any proceedings raising any question relating to such case, or claim and any proceeding relating to any such case, claim or question pending in any other Court shall stand transferred for disposal to the Special Court.

Powers of Supreme Court to transfer cases.

6. (*1*) The Supreme Court may at any stage of a proceeding under this Act, transfer to itself any case or cases pending before a Special Court for disposal.

(*2*) On the application of the Attorney General of India or any party to a proceeding and after giving notice to the parties interested and after hearing persons who desire to be heard, the Supreme Court if it is satisfied that an order under this section is expedient for the ends of justice and for speedy termination of cases, may at any stage, order that, any substantial question of law of general importance raised or which may be raised before the Special Court, shall be decided by itself and shall do so as expeditiously as possible.

Appeal.

7. (*1*) Notwithstanding anything contained in any other law, an appeal shall lie as of right from any judgement or order of a Special Court to the Supreme Court both on facts and on law.

(*2*) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, or order appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appelant had sufficient cause for not preferring the appeal within the period of thirty days.

Liability not attributable to Company's default.

8. (*1*) Where the death of any person or personal injury to any person has resulted from exposure to the gas, not attributable to any neglect or default on the part of the Company it shall be liable to pay such amount in respect of such death or personal injury as is specified in this Act.

(2) The amount payable under sub-section (1) in respect of the death of any person shall not be less than fifty thousand rupees but may extended to two lakh rupees and the amount payable in respect of personal

injury of the nature as may be prescribed shall on a certificate by the competent authority be not less than twenty thousand rupees but may extend to one lakh rupees.

(3) A claim under sub-section (1) shall not be adversely affected by reason of any contributory act or negligence on the part of the person in respect of whose death or personal injury the claim has been made;

Liability attributable to Company's default.

9. In cases where default or negligence on the part of the Company is established in respect of death or personal injury to any person caused by leakage of the gas the company shall in addition to the amount of compensation payable under section 9 or any other law for the time being in force, be also liable to a compensation of not less than rupees fifty thousand in case of death and rupees twenty thousand in case of certified injury.

Power to direct for payment of additional Compensation.

10. Notwithstanding anything contained in any other law a Special Court may, in addition to the amount payable under section 8 and section 9 order any person, including the Company found guilty of negligence or dereliction of duty in erecting, maintaining or running the plant of the Company or in supplying the technical or scientific know-how or equipment to pay to the claimants such further sums on such principle as it deem fit.

Power to remove difficulties.

11. (1) Having regard to the age, expectancy of life and condition of health of the Claimant, the Court if deems it fit, may, instead of awarding a lump sum amount direct that the claimant be paid part of the claim in lump sum at the time of passing of the order and the balance in such further monthly or periodical intervals for a term not exceeding the life of the claimant, as the Court may specify.

(2) The Special Court may on an application by a claimant in whose favour an order has been passed by it modify the order if the medical condition of the claimant has deteriorated and fix afresh the amount payable to the claimant and order it to be paid monthly or periodically or if having regard to the age and medical condition of a claimant, the Court feels that payment of a lump sum would then be in the interest of the claimant, the Court may commute the periodical/monthly sum payable under an earlier order wholly or in part and order payment of a lump sum amount.

(3) The amount payable to a claimant under either of the preceding sub-section shall, without any application by the claimant, be deemed to have increased by such percentage as may be prescribed having regard to the increase in cost of living index at the time of making the award and that prevailing upon 1st April of each succeeding year and the order passed by the Court shall be deemed to have been modified to that extent accordingly.

Explanation For the avoidance of doubt, it is hereby declared that:—

(*a*) nothing contained in this Act shall affect any proceeding instituted by a claimant in a Court outside India nor shall the institution of any such proceeding or any award made therein or pay-

ment made or received by a claimant or any settlement of the claim in a Court outside India shall bar or preclude a claimant from making any application under this Act.

(*b*) the Special Court shall determine the amount payable to a claimant without taking into consideration any such sum or other benefit or relief or advantage obtained or received by a claimant whether in any proceeding or under any contract of employment, insurance or otherwise.

13 of 1855.

(c) the provision of this Act shall override those of the Fatal Accidents Act, 1855 and any other law or a rule having the force of law which is contrary to or inconsistent with the provisions of this Act.

Procedure of applications to the Special Court.

12. (*1*) An application for relief under this Act shall be presented to the Special Court in the manner and within the period as may be prescribed.

(*2*) No court fee shall be payable in respect of an application for relief under this Act or for service of copy of an application upon the Respondent or the Legal Aid Committee.

Applications to be given only by the affected person or his kin.

13. (*1*) An application for relief under this Act in respect of a deceased person shall be made by a parent, surviving spouse or children of the deceased, as the case may be, and an application for relief under this Act in respect of personal injury sustained by a person shall be made by the person himself or if he is minor or under a disability or otherwise incapaciated such application shall be made by the next friend of such person as may be approved of the Court.

(*2*) No payment shall be made to the next friend except with the sanction of the Special Court and on such terms as the Court may impose.

Procedure in case of dispute.

14. If in any case, an applicant's right to claim the amount payable in respect of a deceased person is disputed by any other person, the Special Court shall order that the amount determined under this Act be invested in such manner as the Court may order, until the dispute as to the right to receive amount is decided by the ordinary civil court having jurisdiction in that behalf and the same shall be paid to the such person or persons and in such proportion as such civil court may decide and to that extent the order passed by the Special Court shall stand modified.

Continuity to be maintained by Special Courts during trial.

15. (*1*) Every application under this Act shall be tried as expeditiously as possible and shall as far as possible be concluded within three months from the date of the service of notice of the application on the Respondents.

(*2*) The trial of an application under the Act shall, as far as is practicable consistently with the interest of justice be continued from day to day until its conclusion unless the Court finds the adjournment of the trial to be necessary for reasons to be recorded.

Apportionment of compensation between claimants.

16. If in respect of a deceased person, the amount payable under this Act, is claimed by more than one claimant and there is no dispute as to persons entitled to claim the amount, the Court shall apportion the amount between the claimants in such proportion as it thinks fit and the amount so apportioned shall be ordered to be paid to each of the claimants in the prescribed manner.

Powers of Special Courts.

17. The Special Court shall be empowered—

(*a*) to decide the order in which issues of law or fact or mixed questions of law and fact should be tried;

(*b*) to direct trial of common questions of law or fact with or without consolidation of cases or consolidate them for such limited purposes as it may deem fit.

Power to make rules.

18. The Supreme Court may make rules for carrying out the purposes of this Act generally and in particular for matters hereinbefore provided in this Act.

Power to appoint Committees and assessors.

19. (*1*) The Special Court may appoint a Committee or Committees consisting of a physician, surgeon, radiologist ophthalmologist, nuerologist, nephrologist, psychologist, cancer specialist, cardiologist and environmentalist for assisting the Court to ascertain the extent, nature and effect of or the possible effect of the injury sustained by a claimant, and report to the Special Court.

(*2*) The Special Court may appoint such number of Assessors to assist the Court as it may deem fit.

Limitations.

20. (*1*) An application under this Act shall be made within 3 years from 3-12-1984 in the case of claims for personal injury and in the case of claims in respect of a deceased person within three years from the date of death.

(*2*) Where personal injury first becomes known or manifests or is diagonised after 3-12-1987, such application shall be made within six months of manifestation or knowledge or diagnosis, whichever occurs last.

(*3*) Save as aforesaid, the provisions of Limitation Act, 1963 shall apply to all proceedings under the Act. 36 of 1963.

(*4*) Any amount payable under an order under this Act shall be recoverable in the same manner as arrears of land revenue on a certificate being issued by the Court.

Appointment of Legal Aid Committees.

21. (*1*) The Central Government shall by a Notification issued under this section, appoint a Legal Aid Committee with the Attorney-General of India as ex-officio Chairman and the Advocate-General of Madhya Pradesh as the ex-officio Vice-President, thereof.

(*2*) The Committee shall consist of such number of other members as the Central Government may deem fit.

(3) Any Legal Aid Committee constituted by the Central Government by a resolution shall assist the Committee constituted under this Act.

(4) The Central Government and the Madhya Pradesh State Government shall give such financial and other assistance to the Legal Aid Committee as the Committee may require.

(5) The Legal Aid Committee shall have a right to be heard at the hearing of any proceedings in respect of any application under this Act before the Supreme Court of the Special Court and shall be entitled to lead evidence, oral or documentary or, file an affidavit as it may deem necessary and shall have the right to examine and cross-examine any witness or to administer any interrogatories or to require or take or make discovery or inspection through the Attorney-General of India, the Advocate-General of Madhya Pradesh or such Advocate as the Legal Aid Committee may appoint.

Power to give directions.

22. (1) The Supreme Court or the Special Court as the case may be shall have power to give such directions as may be necessary to the Legal Aid Committee during any proceeding conducted by the Committee, before that Court.

(2) The Supreme Court or the Special Court may order such person to pay to the Committee such amount by way of costs as the Supreme Court or the Special Court may deem fit.

(3) The Attorney-General may after consultation with the Committee and the Central Government and Company submit to the Special Court a scheme for settlement of the claims filed on or before the date specified in the scheme.

(4) Upon such scheme being presented to the Court the Court shall notify the scheme in such manner as it thinks fit and after hearing such parties as may appear, the Court may approve, with or without modification such scheme and the scheme so approved shall become binding upon all the claimants who had applied to the Court on or before the date specified in the scheme, provided that the presentation or approval of the scheme shall not affect any claim filed after the date specified in the scheme.

Applications not to be withdrawn without recommendation of Legal Aid Committee.

23. An application under this Act shall not be withdrawn, compromised, settled or dismissed for want of prosecution or non-attendance unless the Special Court has received a report in that behalf from the Legal Aid Committee and the Court has approved the disposal of the application as recommended by the Legal Aid Committee.

Penalties.

24. (1) Any person found touting or canvassing for work whether for himself or for another person shall be punishable with imprisonment which may extend to one month.

(2) Any person who is found guilty of trafficking in claims or who enters into any arrangement with a claimant in respect of the amount payable to a claimant or agrees to share any part of the claim whether by way of fees or for any services rendered or otherwise shall be punishable with imprisonment which may extend to one month.

Establishment of Solatium Fund.

25. (1) The Central Government may by notification in the Official Gazette establish a fund to be called the "Bhopal Residents Solatium Fund" (hereinafter referred to as the "Fund").

(2) The Fund shall consist of such sum as the Central Government may, after due appropriation made by Parliament by law in this behalf, provide from time to time and such other sums as the State Governments, insurance companies, or other associations, bodies or companies whether private or public may contribute to the fund.

(3) The Fund shall be utilised for making payment to the legal heirs of a person who has dies as a result of the exposure to the gas or to the person injured as a result of exposure to the gas, in accordance with the scheme which may be made by the Central Government for the purpose of administering the Fund.

(4) The Central Government shall in consultation with the Special Court and the Legal Aid Committee make a scheme for the purpose of administering the Solatium Fund.

STATEMENT OF OBJECTS AND REASONS

The tragedy of gas leak at plant of Union Carbide Bhopal has revealed the vulnerability of our big Industrial cities to such dangers threatening thousand of lives. Further it has also revealed that our laws are not adequate to help the victims to claim compensation as effectively and as expeditiously as possible. The Bill is intended to provide such legal protection for the citizens of India to proceed against the foreign companies for compensation consequent to such accidents.

M. KALYANASUNDARAM

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the establishment of Special Courts by the Central Government. Clause 4 of the Bill provides for the appointment of the Judges of the Special Courts. The expenditure towards setting up of the Special Courts and towards salaries and allowances of the Judges and staff will be defrayed out of the Consolidated Fund of India The likely expenditure for Special Courts and on the salaries and allowances of the Judges and the staff over a period of six months is expected to be about rupees four lakhs out of which rupees 1.70 lakhs will be of a recurring nature and rupees 2.30 lakhs of a non-recurring nature. As it is not possible at this stage to visualise the number of such Courts that may have to be established, it is not possible to give an estimate of the actual expenditure that may have to be incurred in this behalf.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 18 of the Bill empowers the Supreme Court to frame rules, as it deems necessary, for carrying out the purposes of the Act.

The delegation of legislative power is of a normal character.

II

BILL NO. XIV OF 1985

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1985. Short title.

2. In article 324 of the Constitution,— Amendment of article 324.

(*a*) for clause (2), the following clause shall be substituted, namely:—

"(2) The Election Commission shall consist of the Chief Election Commissioner and two Election Commissioners and their appointment shall be made by the Chief Justice of India:

Provided that only a person qualified for being appointed as a Judge of the Supreme Court shall be eligible for such appointment."; and

(*b*) for clause (3), the following clause shall be substituted, namely:—

"(3) The Chief Election Commissioner shall act as the Chairman of the Election Commission.".

STATEMENT OF OBJECTS AND REASONS

Clauses (2)-(3) of Article 324 of the Constitution of India lay down that the Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President and that when any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission. Election Commission as such is an appointee of the Council of Ministers.

In practice the Election Commission has become a single Member Commission.

The appointing authority of the Election Commissioner and other Election Commissioners should be beyond the purview and jurisdiction of the Council of Ministers and the Government should have no control over their appointments.

Of late, there has been a popular demand for electoral reforms. Concentration of absolute power in regard to the conduct of all elections to Parliament and the Legislature of every State, in a single individual is neither just nor proper. Moreover, appointment of the Chief Election Commissioner and other Election Commissioners should be beyond the purview of the Council of Ministers so that the conduct of elections could be free, fair and impartial.

The Bill seeks to achieve the aforesaid objectives.

SATYA PRAKASH MALAVIYA

SUDARSHAN AGARWAL,
Secretary-General.

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